

CML Seminar Series: Negotiating for a load of crude – The legal certainty of contractual uncertainty

22 January 2025

The Executive Centre, Level 4 Ocean Financial Centre
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On 22 January, the Centre for Maritime Law (CML) at the National University of Singapore, Faculty of Law, hosted the CML Short Course on Negotiating for a Load of Crude — The Legal Certainty of Contractual Uncertainty at The Executive Centre, Level 4 Ocean Financial Centre. Professor Filippo Lorenzon delivered the seminar, which was attended by 27 legal practitioners and shipping professionals. Professor Stephen Girvin, Director of CML, who moderated the seminar, introduced the speaker.

Professor Lorenzon began by describing the peculiarities of the oil trade industry and emphasising that the commercial practices in this area are unique. Traders often do business through short email exchanges. The speaker divided the negotiation process into three stages. The first stage is the negotiation between traders, which leads to a recap. The recaps presented by parties may not match, which may cause further uncertainty. The second stage is contract drafting, which the contract department usually carries out. The problem at this stage is the lack of communication between traders and contracts. The third stage is the finalisation and formation of the contract.

Next, Professor Lorenzon paid particular attention to the case *BP Oil International Ltd v Glencore Energy UK Ltd* [2022] EWHC 399 (Comm). The contract was sent, but the accept/except process was inconclusive. Both parties stood by their draft and did not finalise all the clauses. Nevertheless, they

exchanged emails that said, 'We are pleased to have concluded this further business with you'. The quality of the oil transferred was poor, and damage occurred. The clause that was particularly not agreed upon by the parties came into play. The court discussed three possible options. The first option was that there was no contract. The second option was that there was a contract on the terms of the recap and the agreed GTCs. The third option was that there was a contract on all terms, and the parties did not disagree. The court preferred the second option. However, Professor Lorenzon emphasised that he preferred the third option as it was the understanding traders would have in mind.

The issue of commercial common sense as a rule of interpretation was discussed in the example of *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50 and *Arnold v Britton* [2015] UKSC 36. Professor Lorenzon concluded with some ideas to bring more clarity to contractual negotiations. However, he mentioned that traders may prefer to leave grey areas in their arrangements.

The seminar concluded with a Q&A session, during which participants discussed the options for contract interpretation analysed in *BP Oil International Ltd* and the applicability of the Unfair Contract Terms Act 1977 to the problem.